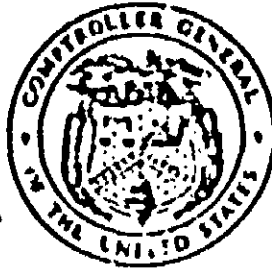


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Wong
119237

FILE: B-208385

DATE: August 18, 1982

MATTER OF: Sunair Electronics, Inc.

DIGEST:

1. Whether offeror is regular dealer or manufacturer under Walsh-Healey Act is for determination by contracting agency subject to final review by Small Business Administration (if small business is involved) and Secretary of Labor.
2. Protest against affirmative determination of responsibility is dismissed because GAO does not review affirmative determinations of responsibility except under circumstances not applicable here.
3. Small Business Administration has exclusive authority to determine small business size status of offerors for procurement purposes.

Sunair Electronics, Inc. (Sunair), protests the award of the Facer-Bounce Program to Communication Associates, Inc. (CAI), under request for proposals FD 2040-82-29288/81-28752-01-04 issued by the Department of the Air Force.

The bases of protest are that CAI is not a regular dealer or manufacturer under the terms of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976), is not a responsible offeror and does not qualify as a small business concern.

Our Office does not consider questions as to whether an offeror is a regular dealer or manufacturer within the meaning of the Walsh-Healey Act. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration (SBA) (if a small business is

involved) and the Secretary of Labor, Gillette Industries, Inc., B-204232, August 13, 1981, 81-2 CPD 139.

Further, we do not review affirmative determinations of responsibility unless there is a showing of fraud on the part of procurement officials or the solicitation contains definitive responsibility criteria that allegedly have not been applied. Langfur Construction Corporation, B-204380, September 4, 1981, 81-2 CPD 201. Neither exception is shown here.

Finally, under 15 U.S.C. § 637(b)(6) (1976), the SBA has exclusive authority to determine the small business size status of offerors for procurement purposes. Omega Container, Inc., B-206290, B-206361, March 16, 1982, 82-1 CPD 250.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel